In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1627

BARTHELMIO DALLI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 2271 Misc.

THOMAS PYTEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of New York, petitioners were convicted on one count charging the sale, receipt and concealment of approximately eleven pounds of illegally imported heroin, and on one count of conspiracy to commit that offense, in violation of 21 U.S.C. 174. Each was sentenced to concurrent prison terms of twenty years. The court of appeals affirmed (Pet. 23-30).

Petitioner Dalli contends that probable cause was lacking to support his arrest pursuant to which the suitcase containing the heroin was found. He also argues that the trial judge's decision to summarize the evidence was an abuse of discretion. Petitioner Pytel argues that his Sixth Amendment rights were violated by the holding of a hearing on a pre-trial motion to suppress in his absence. These contentions are answered in the opinion of the court below, on which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 388044 780